



To the Honorable Council
City of Norfolk, Virginia

May 12, 2015

From: David S. Freeman, AICP
Director of General Services

Subject: Encroachment Agreement
for Outdoor Dining – Paint, LLC t/a
Starving Artist Cafe, 4408 Colley
Avenue, Norfolk, VA 23508

Reviewed: Sabrina Joy Hogg
Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/7

Approved: Marcus D. Jones
Marcus D. Jones, City Manager

Item Number: **R-6**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Paint, LLC t/a Starving Artist Cafe
4408 Colley Avenue, Norfolk, VA 23508
Norfolk, VA 23504

Building Owner:
Robert Schlegel
4408 Colley Avenue
Norfolk, VA 23505

III. **Description**

This agenda item is an Encroachment Agreement to permit restaurant operator Paint, LLC t/a Starving Artist Cafe to encroach approximately 218 square feet into City of Norfolk right-of-way. The purpose of this encroachment is to allow outdoor dining to encroach into the right-of-way located at 4408 Colley Avenue, Norfolk, VA 23508.

IV. **Analysis**

An encroachment is an object or structure that infringes into the City of Norfolk's right-of-way or property. Norfolk City Code, Section 42-10, requires all encroachments into City rights-of-way and properties to be approved by City Council.

The Encroachment Agreement will permit Paint, LLC t/a Starving Artist Cafe to erect a railing structure to enclose tables and chairs for outdoor dining that will encroach into the right-of-way at 4408 Colley Avenue, Norfolk, VA 23508. The term of the encroachment is no longer than three (3) years, commencing on June 1, 2015 and terminating on May 31, 2018.

Hours of Operation	Outdoor Seating Capacity
7am - 4pm Tuesday through Sunday	10

V. Financial Impact

The applicant will pay the City an annual rent in the amount of \$1,308.00 at \$6.00 PSF paid quarterly at \$327.00 for a three year term. (Building lease is for 3 years.)

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

The outdoor dining request was approved by the Design Review Committee on February 9, 2015.

IX. Coordination/Outreach

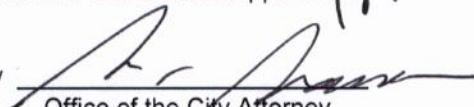
This letter has been coordinated with the Department of General Services - Division of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Encroachment Agreement

04/08/15 tsv

Form and Correctness Approved: 

By 
Office of the City Attorney

NORFOLK, VIRGINIA

Contents Approved: 

By 
DEPT.

ORDINANCE No.

AN ORDINANCE APPROVING AN ENCROACHMENT AGREEMENT WITH
PAINT, LLC, T/A STARVING ARTIST CAFE, FOR PROPERTY LOCATED
AT 4408 COLLEY AVENUE.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and provisions of the Encroachment Agreement between the City of Norfolk and Paint, LLC t/a Starving Artist Cafe, a copy of which is attached hereto as Exhibit A, by which the City of Norfolk authorizes Starving Artist Cafe to encroach into the right of way at 4408 Colley Avenue, with an area measuring approximately 218 square feet on Colley Avenue, upon certain conditions specifically set forth therein, is hereby approved.

Section 2:- That the City Manager is hereby authorized to execute the Encroachment Agreement and do all things necessary for its implementation.

Section 3:- That this ordinance shall be in effect from and after its adoption.

ENCROACHMENT AGREEMENT

This Encroachment Agreement (hereinafter "Agreement") is made and entered into this ----- day of -----, 2015, by and between the **City of Norfolk**, a municipal corporation of the Commonwealth of Virginia (hereinafter "City"), and **PAINT, LLC t/a Starving Artist Cafe** (hereinafter "Paint").

WITNESSETH:

1. **ENCROACHMENT AREA.** City hereby grants permission to Paint to encroach into the right of way of Colley Avenue at 4408-A Colley Avenue, with an area measuring approximately 18' 6" by 10' on Colley Avenue, with a total of 218 square feet, more or less, as shown on **Exhibit A** attached hereto ("Encroachment Area"), for the purpose of outdoor dining and no other purpose.

2. **USE.** Paint shall be permitted to occupy the Encroachment Area for outdoor dining uses in conjunction with the operation of the restaurant as an eating and drinking establishment.

3. **TERM; TERMINATION.** The term of the permission to encroach granted hereby shall be no longer than three (3) years and shall commence on June 1, 2015, or upon the effective date of any authorizing ordinance, whichever shall last occur, and shall terminate on May 31, 2018. However, it is expressly understood that the permission granted hereby is expressly subject to the right of revocation by the Norfolk City Council, and that in the event of such revocation, Paint, or its successors or assigns, if requested by City, shall remove the encroaching structures and shall cease using the Encroachment Area.

4. **COMPENSATION.** As compensation for the privilege of encroaching into the right of way, Paint shall pay City annual rent in the amount of One Thousand Three Hundred Eight and 00/100 Dollars (\$1,308.00) in quarterly installments of \$327.00 beginning on

the first day of June, 2015 or the day the ordinance is effective whichever is later. The rent shall be paid by check payable to the Norfolk City Treasurer and sent to the Real Estate Office, Department of General Services, 232 E. Main Street, Suite 250, Norfolk, Virginia 23510.

5. **LATE FEES.** For any late payments received 15 days after the date due, Paint shall pay a late fee of five percent (5%) of the amount not paid when due.

6. **UTILITIES.** City shall not be responsible for utilities of any type used within the Encroachment Area. Paint shall pay all utility meter and utility services charges for all utilities, including but not limited to gas, electricity, water, telephone, sewer, and any other necessary to serve the Encroachment Area.

7. **REPAIRS.** Paint shall keep and maintain the Encroachment Area in good and complete state of repair and condition. Paint shall make all repairs and replacements of every kind to the sidewalks and paved areas of the Encroachment Area in order to preserve and maintain the condition of the Encroachment Area. All such repairs and maintenance shall be performed in a good and workmanlike manner, be at least equal in quality and usefulness to the original components, and not diminish the overall value of the Encroachment Area.

8. **REQUIREMENTS OF PUBLIC LAWS.** Paint shall suffer no waste or injury to the Encroachment Area and shall comply with all federal, state and municipal laws, ordinances and regulations applicable to the structure, use and occupancy of the Encroachment Area. In addition, Paint shall effect the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the Encroachment Area.

9. **CITY'S RIGHT TO ENTER AND CURE.** City shall retain the right to enter upon the Encroachment Area at any time for the purpose of inspecting the Encroachment Area, ascertaining compliance with this Agreement, and making any repairs which City deems necessary as a consequence of any failure of Paint to meet its obligations under this Agreement.

The cost of any such repairs shall be deemed additional compensation payable to the City on demand. Any entry upon the Encroachment Area or cure and repair shall be accomplished by City at reasonable times and in the exercise of reasonable discretion by the City. The making of any repairs by City shall not constitute a waiver by City of any right or remedy upon Paint default in making repairs.

10. **NOTICE.** Any notice shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

To City: Department of General Services – Real Estate Office
232 E. Main Street, Suite 250
Norfolk, Virginia 23510

To Paint: Paint, LLC t/s Starving Artist Cafe
4408-A Colley Avenue
Norfolk, Virginia 23517

With copy to: City Attorney
900 City Hall Building
810 Union Street
Norfolk, Virginia 23510

Either party hereto may change its address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if sent properly by mail).

11. **ENVIRONMENTAL MATTERS.** Paint agrees that it will not introduce onto the Encroachment Area any toxic, hazardous or dangerous materials unless such material is stored, safeguarded, or used in accordance with applicable laws and regulations. Paint will not allow any air, water or noise pollution to occur in the Encroachment Area. Paint hereby agrees to use and occupy the Encroachment Area in a safe and reasonable manner and in accordance with applicable law.

City in turn agrees that Paint shall not be responsible or assume liability for environmental conditions existing on or about the Encroachment Area prior to occupancy by Paint.

12. **DESTRUCTION.** If the encroaching structures or any part thereof shall be damaged or destroyed by fire, lightning, vandalism, or by any other casualty or cause, the permission granted hereby shall be automatically terminated unless the parties agree, in writing, to continue to permit the encroachments granted by this Agreement.

13. **NON-LIABILITY OF CITY.** City shall not be liable for any damage or injury which may be sustained by Paint or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, gas, sewer, waste or spoil pipes, if any, upon the Encroachment Area, or by reason of the elements.

14. **REMOVAL OF SNOW.** Paint agrees to remove or cause to be removed, as the need for the same arises, snow and ice from the Encroachment Area.

15. **ALTERATIONS.** Paint covenants and agrees that it will not make any improvements, changes installations, renovations, additions or alterations in and about the Encroachment Area without the prior written consent of the City other than the approval given by Norfolk's Architectural Review Board and Norfolk's Planning Commission. If Paint installs or makes any improvements, additions, installations, renovations, changes on or to the Encroachment Area with the approval of City, Paint hereby agrees to remove, if requested by City, any improvements, additions, installations, renovations, changes on or to the Encroachment Area upon termination of this Agreement. In the event Paint fails to remove and is requested to do so by City, then City may remove the improvements, additions, installations, renovations, changes and Paint shall pay for the cost of such removal.

16. **ASSIGNMENT AND SUBLETTING.** City and Paint agree that the permission to encroach granted hereby may not be assigned by Paint without written approval from Norfolk's City Manager.

17. **SURRENDER BY PAINT.** Paint will surrender possession of the Encroachment Area to City and remove all goods and chattels and other personal property therefrom upon termination of the permission granted hereby. Paint shall return the Encroachment Area to the City in as good order and condition as it was at the beginning of Paint use of the Encroachment Area. If Paint has been requested to remove and fails to remove all items from the Encroachment Area upon termination hereof, City is authorized to remove and dispose of any such personal property and Paint shall be liable to City for the cost of any removal and disposal.

18. **INSURANCE.** Paint shall maintain in full force and effect a Commercial General Liability insurance policy, occurrence form, for the duration of this agreement. The policy will provide combined single limit for bodily injury, death and property damage insurance in the amount of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate, insuring City and Paint against liability claims and suits arising out of the use, occupancy, or maintenance of the Encroachment Area and appurtenant areas. The policy shall be endorsed as primary insurance in favor of City naming the City, its officers, employees, agents and representatives as additional named insured, as evidenced by a Certificate of Insurance provided to the City within thirty (30) days after adoption of this Agreement. All insurance policies and certificates shall provide for thirty (30) days advance notice in writing to the City Manager if the insurance is cancelled or modified.

19. **INDEMNIFICATION.** Paint shall indemnify and save harmless City from all fines, penalties, costs, suits, proceedings, liabilities, damages, claims and actions of any

kind arising out of the use and occupation of the Encroachment Area by reason of any breach or nonperformance of any covenant or condition of this Agreement by Paint, or by Paint's act of negligence, and not caused in whole or in part by City.

20. **FIXTURES.** City covenants and agrees that no part of the improvements constructed, erected or placed by Paint in the Encroachment Area shall be or become, or be considered as being, affixed to or a part of the right of way, and any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of City and Paint to covenant and agree that all improvements of every kind and nature constructed, erected or placed by Paint in the Encroachment Area shall be and remain the property of Paint, unless such improvements are not removed upon termination of this Agreement.

21. **LIENS OR ENCUMBRANCES.** If because of any act or omission of Paint, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Encroachment Area, Paint shall, at its own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the City to Paint of the filing thereof, and Paint shall have the right to contest the validity of such lien if it so chooses.

23. **APPLICABLE LAW.** The permission granted by this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any suit or legal proceeding relating to permission granted hereby shall be brought only in the state or federal courts located in the City of Norfolk, Virginia.

24. **WAIVER OF TRIAL BY JURY.** To the extent permitted by law, City and Paint mutually waive their rights to trial by jury in any action, proceeding or counterclaim brought by either party against the other with respect to any dispute or claim arising out of the permission to encroach granted to Paint by this agreement.

25. **OTHER REQUIREMENTS.**

(a) Paint shall comply with all requirements of the City of Norfolk Department of Public Health with respect to the use of the Encroachment Area.

(b) The use of the Encroachment Area shall be subject to the jurisdiction and review of the City of Norfolk's Architectural Review Board.

(c) Paint use of the Encroachment Area shall not interfere with any water meters or sewer cleanouts.

(d) A trash can compatible in design and style with the table and chairs will be provided for the outdoor dining, and trash shall be removed daily.

(e) Tables and chairs will be arranged according to plan approved by Norfolk's Architectural Review Board.

IN WITNESS WHEREOF, Parties have executed or have caused this Encroachment Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

THE CITY OF NORFOLK

By: _____
Marcus, D. Jones, City Manager

ATTEST:

City Clerk

**PAINT, LLC
T/A STARVING ARTIST CAFE**

By: _____
Print Name:
Print Title:

APPROVED AS TO CONTENTS:

Director, General Services

FORM & CORRECTNESS APPROVED:

Deputy City Attorney

EXIST. GRASS

EXIST. WATER
LINE COVER

EXIST. TREE

EXIST. AWNING
ABOVE

STRATA MODERN
SQUARE ALUMINUM
OUTDOOR TABLE, FINISH:
POLISHED ALUMINUM

EXPRESS MODERN
ALUMINUM OUTDOOR
ACCENT CHAIR, FINISH:
POLISHED ALUMINUM

AREA OF
ENCROACHMENT: 218 SF

EXIST. GRASS

EXIST. STREET
SIGN

EXIST.
LANDSCAPING

7'-1 $\frac{3}{4}$ "

PROPERTY LINE

12'-3 $\frac{1}{4}$ "

11'-10 $\frac{1}{4}$ "

ENCROACHMENT

5"

5'-0"
SIDEWALK

18'-5 $\frac{1}{2}$ "

17'-10 $\frac{3}{4}$ "

36" MIN.

2
A2.0

1
A2.0

1'-4 $\frac{7}{8}$ "

SINGLE BIKE
RACK

PROPERTY
LINE



1 PROPOSED PLAN
3/16" = 1'-0"



ROBYN THOMAS
ARCHITECTURE
913 W. 21st Street, Suite C
Norfolk, VA 23517
Ofc: 757.622.7160
Fax: 757.640.1014

NORFOLK ENCROACHMENT
4408 COLLEY AVENUE
NORFOLK, VA

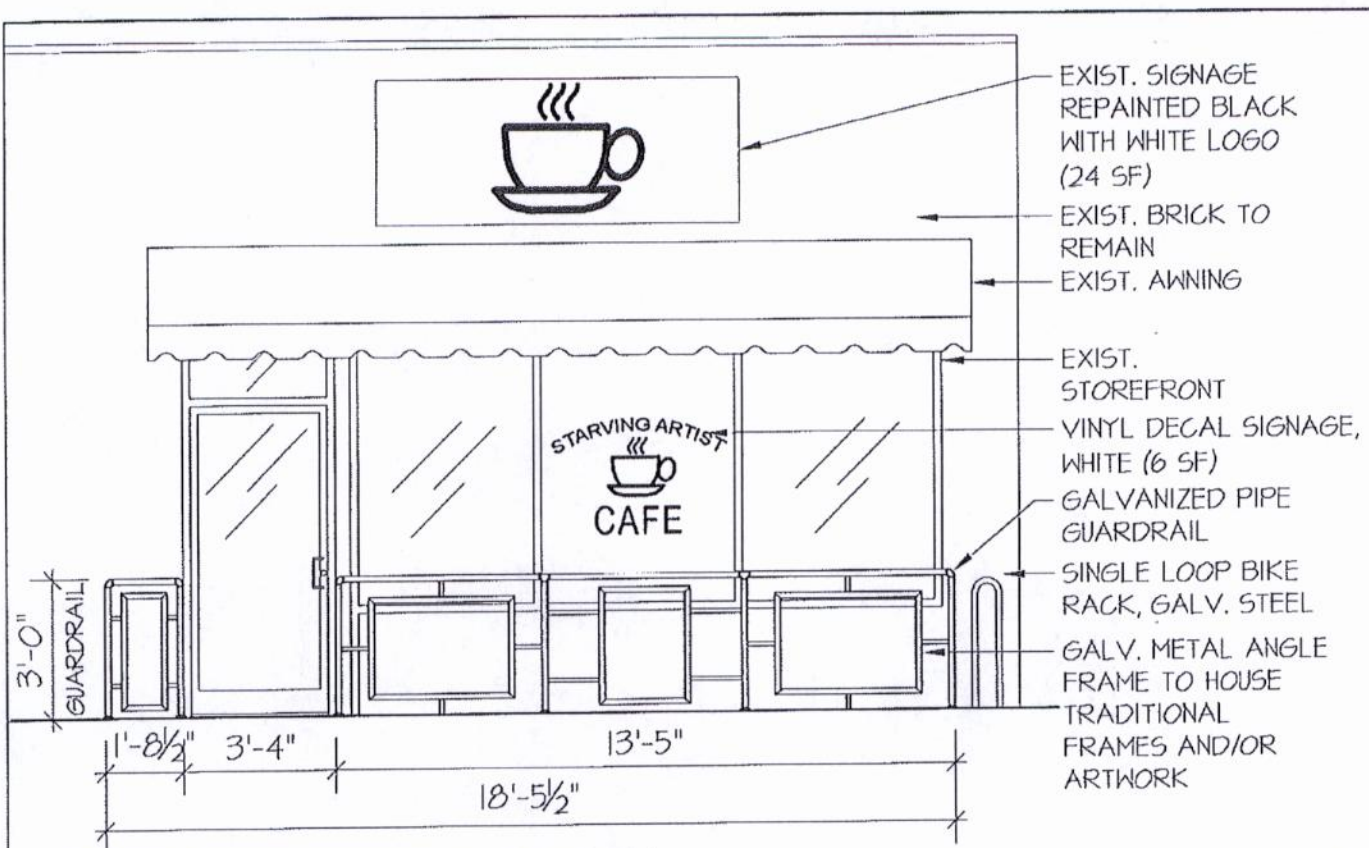
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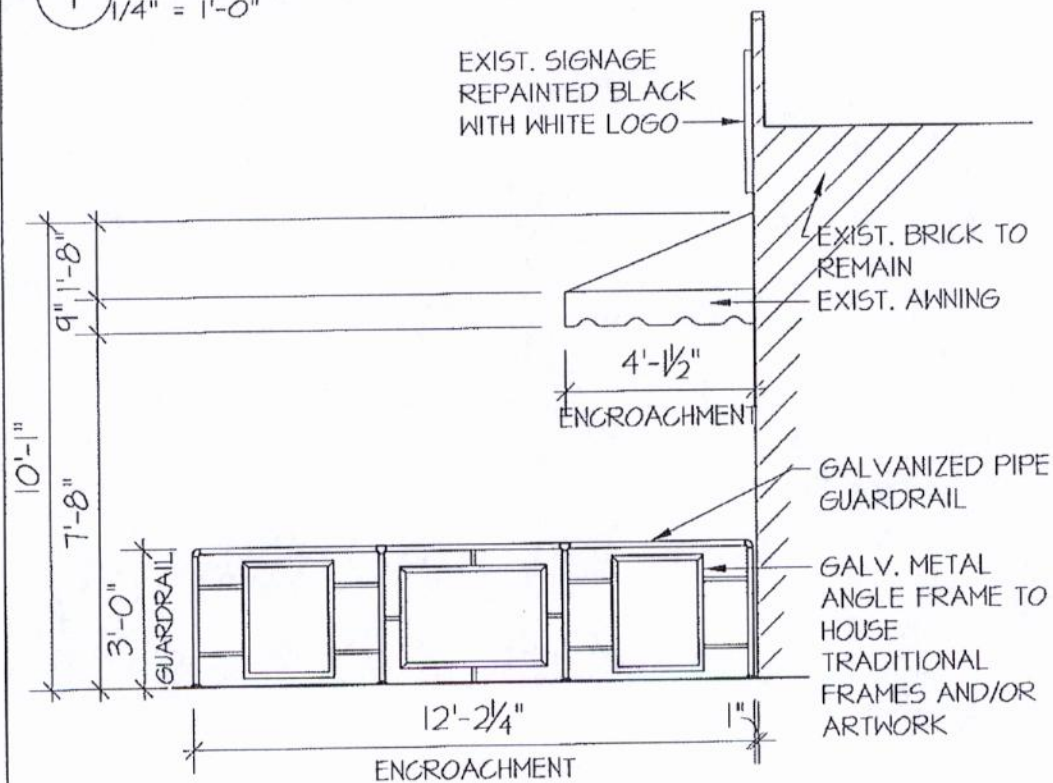
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A1.0



1 PROPOSED ELEVATION

1/4" = 1'-0"



2 PROPOSED SECTION

1/4" = 1'-0"

MATERIAL LIST:

1. 94 1/2" X 31" X 2" EXIST. METAL SIGN REPAINTED, COLOR: BLACK W/ WHITE LOGO (24 SF)
2. EXISTING FABRIC AWNING TO REMAIN, COLOR: BLUE
3. 1 1/2" GALVANIZED METAL PIPE GUARDRAIL
4. VINYL WINDOW DECAL SIGNAGE, WHITE (6 SF)
5. SINGLE LOOP BIKE RACK, GALVANIZED STEEL
6. GALVANIZED METAL ANGLE FRAME TO HOUSE TRADITIONAL FRAMES AND/OR ARTWORK
7. STRATA MODERN SQUARE ALUMINUM OUTDOOR TABLE, FINISH: POLISHED ALUMINUM
8. EXPRESS MODERN ALUMINUM OUTDOOR ACCENT CHAIR, FINISH: POLISHED ALUMINUM



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NORFOLK ENCROACHMENT
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NORFOLK, VA

DATE: 01.20.2015

COMM NO: 14-085

DRAWN BY: CGB

CHECKED BY: RJT

A2.0